

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2007

Coram:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

A.S.No.924 of 1996

Thangavel Goundar

.. Appellant

vs.

1.Sellammal

2.Kalai Arasi

3.Minor Senthilkumar

(rep by mother and Guardian Sellammal)

.. Respondents

Prayer: Appeal filed against the judgment and decree dated 23.12.1994 made in O.S.No.285 of 1990 on the file of the Subordinate Judge, Udumalpet.

For Appellant : Mr.N.Varadarajan

For Respondents : Mr.V.Nicholas for R1 to R3

J U D G M E N T

This appeal has been preferred against the judgment and decree dated 23.12.1994 made in O.S.No.285 of 1990 on the file of the Subordinate Judge, Udumalpet.

2.The appellant herein was the defendant before the trial Court. The suit was filed for partition and separate possession of 2/3 share of the suit property in favour of the second and third respondents/ plaintiff 2 and 3 before the trial court and also to create a charge for maintenance in favour of the first respondent/first plaintiff.

3.It is not in dispute that the first respondent is the wife of the appellant. The second respondent is unmarried daughter and the third respondent is the minor son of the appellant. The relationship of the parties is not in dispute. In order to substantiate the claim, the first respondent was examined as P.W.1 and Ex.A1 copy of the partition deed dated 07.01.1974, entered into between one Narayanasamy gounder and Mayilsamy gounder was marked on the side of the plaintiffs/respondents. On the side of the defendant/ appellant, himself was examined as D.W.1.

4. Considering the oral and documentary evidence, the trial Court passed the impugned judgment whereby held that the respondents 2 and 3 are entitled to 2/3 share in the suit property and the first respondent/wife of the appellant is entitled to get Rs.200/- towards

maintenance per month and Rs.500/- per annum towards other expenses and also made a charge over 1/3 share for which the appellant is entitled to. On the aforesaid terms, preliminary decree for partition was passed by the Court below.

5. Mr.N.Varadarajan the learned counsel appearing for the appellant has not disputed the relationship between the parties appearing. However, according to the learned counsel, the appellant did not send the respondents to the parents house of the first respondent. The first respondent on her own decision went along with respondents 2 and 3 to her parents house. The another argument advanced by the learned counsel is that the appellant had purchased three acres of land in the name of his wife/the first respondent and therefore, the appellant is not bound to pay any maintenance to the first respondent. But, admittedly as per the evidence available on record, the aforesaid property was purchased by the first respondent by selling her own jewels and she had paid the consideration for the same.

6.The learned counsel argued that the plea of benami transactions is not legally sustainable and further it has been admitted as per the sale deed that the property was purchased by the first respondent herself out of her source of income. It is not in dispute that the court below has awarded only a minimum of Rs.200/- per month towards maintenance and Rs.500/- per annum for other expenses to the first respondent. The second respondent being an unmarried daughter as per Hindu Successions Act, 1989 is entitled to claim share in the ancestral property. The legal proposition is not in dispute and therefore, I am of the view that the trial court only after considering the evidence on record, has held that the respondents 2 and 3 are entitled to 2/3 share in the suit property and similarly, the charges have been created over the 1/3 share of the appellant towards maintenance of the first respondent. On the above facts and circumstances, I could find no illegal or infirmity in the impugned judgment passed by the Court below so as to warrant any interference by this court.

7.In the result, the impugned judgment and decree of the trial court is confirmed and the appeal is dismissed. However, there is no order as to costs.

vri

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Subordinate Judge,
Udumalpet.

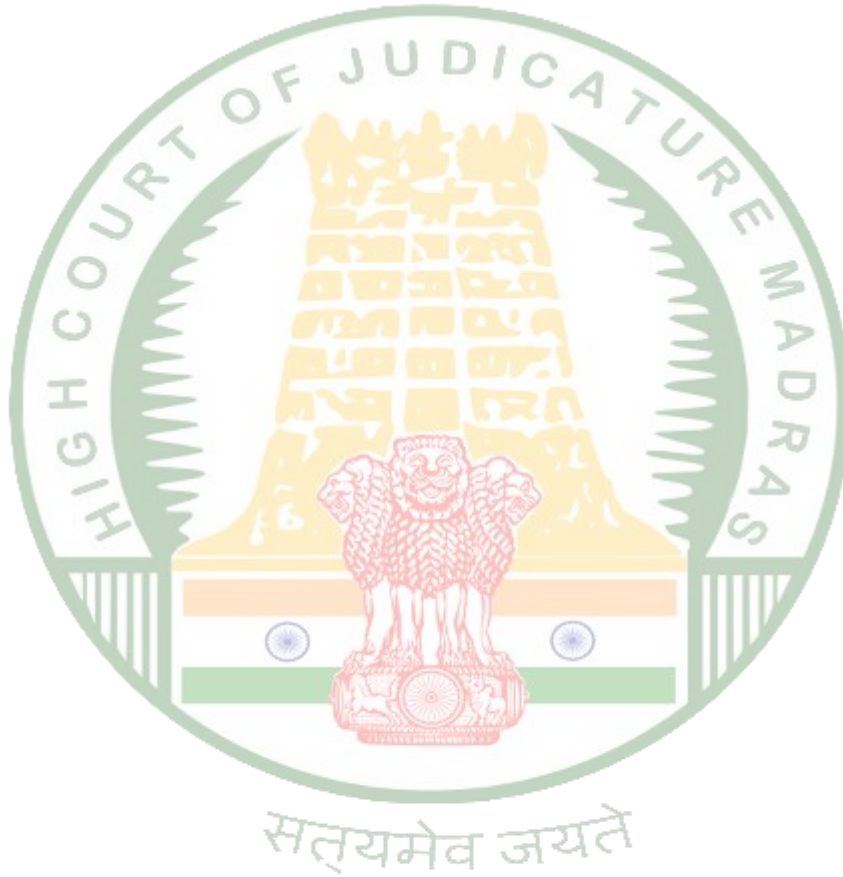
2.The Section officer, VR Section, High Court, Madras.

+ One cc to M/s V. Nicholas, Advocate SR 71062

KS (co)

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